

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5862 of 2017

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Rajan Kumar Singh, Son of Shri Surendra Prasad Singh, Resident of Block
More Aurangabad Old G.T. Road, P.S. Aurangabad District- Aurangabad.

... .. Petitioner

Versus

1. The Magadh University Bodh Gaya through the Registrar Magadh University Bodh Gaya.
2. The Vice Chancellor Magadh University Bodh Gaya.
3. The Registrar Magadh University Bodh Gaya.
4. The Inspector of Colleges (Arts and Commerce).
5. Sri Shushil Kumar Singh, Son of Late Ram Naresh Singh, Resident of Singh Kothi, Old G.T Road Aurangabad, P.S. & Dist.- Aurangabad.
6. The Chancellor of Universities, Bihar, Raj Bhawan, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Abhinay Raj, Advocate Mr. Gagan Deo Yadav, Advocate Mr. Vinod Kumar, Advocate Mr. Udeshya Kumar Yadav, Advocate Mr. Alexander Ashok, Advocate
For the Respondent M.U.:		Mr. Shivendra Kishore, Senior Advocate Dr. Kumar Amitesh Chandra, Advocate
For the Chancellor	:	Mr. Rajendra Kumar Giri, Advocate
For Respondent No.5	:	Mr. S.D.Sanjay, Senior Advocate Ms. Parul Prasad, Advocate Ms. Priya Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

17 18-12-2018

Heard learned counsel for the parties.

The petitioner is an elected member of the Bihar Legislative Council from Aurangabad Local Body Area. Anugrah Narayan Memorial College, Aurangabad, is an affiliated college under Magadh University, Bodh Gaya.

Section 60 of the Bihar State Universities Act, 1976 (hereinafter referred to as 'the Act'), contemplates constitution of a Governing Body for management and administration of an



affiliated college, other than a college owned and maintained by the State Government or a college established and administered by minority community. Sub-section (1) of Section 60 provides constitution of the Governing Body with following members: -

- (i) **Principal of the College – *Ex-Officio*,**
- (ii) **a member elected by and from amongst the teachers of the College,**
- (ii) **a representative of the University nominated by the Vice-Chancellor,**
- (iv) **an officer of the State Government posted in the district, being not below the rank of a sub-divisional magistrate, nominated by the Vice-Chancellor,**
- (v) **a member elected by such donors from amongst themselves as have donated at least twentyfive thousand rupees to the College,**
- (vi) **One member to be nominated by the Vice-Chancellor, who is a member of the Parliament or the State Legislature and mainly resides in the district of the area in which the College is situated; and**

(Emphasis added)

- (vii) **One member co-opted by the Governing Body from amongst such educationists or persons residing in the district where the College is situated as are reputed for their academic interest.”**

It is the case of the petitioner that by notification issued on 07.03.2018, under the orders of the Vice-Chancellor of the University, the petitioner was nominated as a Member of



the Governing Body as contemplated under Item (vi) above. The Governing Body, so constituted, was asked to co-opt an Educationist Member as contemplated under Item (vii) in a meeting to be held within 21 days of the issuance of the notification and elect President and Secretary of the Governing Body within 21 days thereafter.

Hardly four days after issuance of the said notification dated 07.03.2017, the Magadh University came out with another office order dated 11.03.2017 nominating respondent No.5 in place of the petitioner. Respondent No. 5 is the Member of Parliament of the area. The said office order dated 11.03.2017, issued under the signature of the Inspector of Colleges of the University, is under challenge in the present writ application. The main ground taken by the petitioner to assail the impugned office order is that the action is in breach of principles of natural justice as also in violation of the proviso to Article 3(i) of the Statute Regarding Management and Constitution of Governing Body (hereinafter referred to as 'the Statute').

In conformity with the requirement under Section 60 of the Act, the Statute has been framed with the assent of the Chancellor, Universities of Bihar, which also requires constitution of Governing Body, as contemplated under the said



Section. Sub-Article (2) of Article 1 of the Statute makes provision for constitution of an *Ad hoc* committee, if for any reason the Governing Body of an admitted college is not constituted. Clause (ii) of Sub-Article (2) of Article 1 is also relevant for the present adjudication and in view of the nature of the order, which I intend to pass, the same is being reproduced hereinbelow :

“(ii) If any difficulty arises in the formation or the filing up of any seat in the Governing Body of any admitted college for any reason what-so-ever, the Syndicate shall on its own initiative or on reference to it, decide the issue. If anybody, however, is dissatisfied with the decision of the Syndicate, he shall have the right of appeal to the Chancellor within thirty days of the decision whose decision thereon shall be final and binding on the persons concerned.”

The proviso to Article 3(i), which is the sheet anchor for the petitioner to challenge the impugned decision, reads thus: -

“Provided that term of office of any member other than ex-officio member may be terminated, any time, by the Syndicate on the recommendation of the Vice-Chancellor if the continuance of the member is not in the interest of the college.”

(Emphasis added)

The facts are not much in dispute.



Mr. Abhinay Raj, learned counsel appearing on behalf of the petitioner has made a very short submission by referring to the proviso to Article 3(i) of the Statute to contend that only in case the continuance of a member is not found to be in the interest of the college, term of office of the member can be terminated even before the period of three years, which is the prescribed period for members of the Governing Body to continue, expires. He has submitted that in the absence of any material that the continuance of the member was not in the interest of the college, petitioner's term could not be terminated prematurely. He further contends that petitioner's removal from the Governing Body is stigmatic for the reason that the impugned order, read with proviso to Article 3(i) of the Statute, gives an impression that the petitioner's continuance as member was not found to be in the interest of the college.

He contends, therefore, that it was incumbent upon the respondents to have given the petitioner an opportunity of hearing before removing him from the Governing Body. He has relied on a decision of this Court dated 16.03.2012 rendered in C.W.J.C. No. 10372 of 2011 (*Shankar Dayal Singh vs. Magadh University and Others*) in support of this plea. In the said case too respondent No.5 herein was impleaded as party.



He has submitted that this Court has held, reading Clause 28 of Statute 32 read with Section 60 of the Act, that principles of natural justice applies to a regular Governing Body before removal. He has submitted that this Court has gone to the extent of observing that the principles of natural justice shall apply also if one *Ad hoc* committee is to be replaced not by a regular body, but by another *Ad hoc* committee.

A counter affidavit has been filed on behalf of the University stating, *inter alia*, that initially the petitioner was nominated as member of the Governing Body, but, subsequently, it was felt that respondent No.5 was more suitable for the college and accordingly the University replaced the petitioner by respondent No.5. There is no statement, however, in the counter affidavit that continuance of the petitioner as member of the Governing Body was found not to be in the interest of the College.

A counter affidavit has been filed on behalf of respondent No.5 also stating that there was an *Ad hoc* committee of the college earlier functioning, which was dissolved by a notification No.494/13 dated 13.12.2013, whereafter a Governing Body was constituted of which respondent No.5 was nominated in the category of member as



public representative. After expiry of the term of three years, since no step was taken by the University either to re-constitute the Governing Body in accordance with the provisions of Section 60 read with the Statute, an *Ad hoc* committee was functional with respondent No.5 as a member. It has also been stated that the term of Vice-Chancellor of the University had, in the meantime, expired and no appointment of Vice-Chancellor of the University was made after following the due procedure for appointment of a regular Vice-Chancellor. In that situation, awaiting appointment of a regular Vice-Chancellor in accordance with the provisions of the Act, the Chancellor had entrusted the charge of the Vice-Chancellor for performing day-to-day functions in the Magadh University to the Acting Vice-Chancellor. Subsequently, the Chancellor informed the Acting Vice-Chancellor through letter dated 07.02.2017 that she had been made In-charge Vice-Chancellor under working arrangement only. It was also mentioned that earlier through letter dated 20.10.2016, the office of the Chancellor had directed that persons appointed under working arrangement as Vice-Chancellor must not take any policy decision, nor any action for appointment or transfer etc.. It also mentioned that no decision under any new scheme could be taken nor any new work



creating any financial liability could be started by the Acting Vice-chancellor. In case, any need arose for taking some policy decision or financial decision, prior permission must be obtained from the Chancellor, the letter read. It is stated in the counter affidavit of respondent No. 5 that despite such direction issued by the office of the Chancellor, prohibitory in nature, the In-charge Vice-Chancellor issued the notification dated 07.03.2017, which is apparently in the nature of a policy decision for fresh constitution of a Governing Body. Since nomination of the writ petitioner as member of the Governing Body was done without any authority, by the Acting Vice-Chancellor, it was an illegal act, which cannot be said to be conferring any right upon the petitioner, the respondent No.5 pleads.

Mr. S.D. Sanjay, learned Senior Counsel appearing on behalf of respondent No.5 has submitted that the constitution of the Governing Body through notification dated 07.03.2017 is bad in law since the Acting Vice-Chancellor did not have the authority to take a policy decision and, therefore, the body, which was functional prior to that would be deemed to have been continued. He has argued that since respondent No.5 was the public representative member in the *Ad hoc* committee, by



the subsequent order his position has been restored and, therefore, there is no illegality in the subsequent notification dated 11.03.2017. He has also argued that the expression 'Member of the Parliament' falls before 'Member of State Legislature' and because Member of Parliament represents much larger area than Member of State Legislature, continuance of respondent No.5 as member of the Governing Body is more in the interest of college and, therefore, the impugned action does not warrant interference by this Court. He has also submitted, with reference to the statement made in paragraph 16 of the counter affidavit of respondent No.5 that immediately after nomination of members in the Governing Body, the University realized that though Member of Parliament (Respondent No. 5) was available to be nominated as public representative member, a Member of State Legislature (petitioner) was mistakenly nominated and it was considered, therefore, that respondent No.5 should be nominated in public interest.

It is to be noted that there is no dispute in respect of the fact that Acting Vice-Chancellor was performing the functions of the Vice-Chancellor of the Magadh University on the date of issuance of the impugned notification dated



07.03.2017 and subsequent impugned office order dated 11.03.2017.

Countering the submissions made by Mr. S.D. Sanjay that the Acting Vice-Chancellor had a very limited role to play and to discharge only day-to-day duties of the office of the Vice-Chancellor, Mr. Abhinay Raj, learned counsel for the petitioner, has relied on a judgment and order dated 12.09.2014 passed by this Court in C.W.J.C. No. 9167 of 2012 (*Dr. Arun Kumar Sinha and Others vs. The State of Bihar and Others*) and other analogous cases, referring to paragraph 107 of the said decision, which reads thus :-

“107. Here is the question, the arrangement was/is to be made for the performance of duties of the Vice-Chancellor. Section 13 of the University Act does not create any inhibition in performance of any of the duties of any nature mentioned in Section 10 of the University Act. Section 13 of the University Act does not create any rider that the person appointed as Acting Vice-Chancellor in a particular emergent situation will discharge the function of the routine nature but it has been conferred he will discharge the duties of the office of the Vice-Chancellor. Section 10 read with Section 13 of the Act does not provide, a person appointed as Acting Vice Chancellor should be in the rank to Vice-Chancellor. This Court is of the view that in view of the Full Bench judgment of M.P. High Court and on considering the words and phrase used in Section 13 of the University Act this Court finds that the person appointed as Acting Vice-Chancellor in exercise of power under Section 13 of the University Act cannot be said that



he would only discharge on day to day routine nature of function not the function mentioned in Section 10 of the University Act. If he will not allowed to do such function, then what he will do? So much so constitution of Selection Committee cannot be said to be a major function of the Vice-Chancellor such as taking a policy decision of the University. This Court is of the view that the action of Dr. Arun Kumar in constituting the Selection Committee cannot be said to be bad in law, so much so, in view of the direction of the Hon'ble Supreme Court to conduct the interview and published the same within the time framed mentioned in the order. Accordingly this issue goes against the petitioners."

(Emphasis supplied)

Mr. S.D.Sanjay in his reply has submitted that Section 10 of the Act lays down the qualifications for a person to hold the office of the Vice-Chancellor and contends that unless such person is, in the opinion of Chancellor, 'reputed for his scholarship and academic interest' can be said to be qualified to hold the office of the Vice-Chancellor. He has contended that there is well structured procedure prescribed for selection for appointment of a regular Vice-Chancellor to meet the standards of qualification as laid down under Section 10 of the Act and, therefore, only such person, who has been duly appointed as Vice-Chancellor under Section 10 of the Act can exercise all such powers which are vested in the Office of the Vice-Chancellor. Drawing my attention to Section 13, he submits that



in the absence of a regular Vice-Chancellor, it is by way of an arrangement that someone is asked by the Chancellor to perform the duties of the office of the Vice-Chancellor. He contends that the Chancellor, while making such arrangement, has jurisdiction to limit the powers of the Acting Vice-Chancellor.

With the aforesaid submissions, he has referred to the letter dated 07.02.2017 (Annexure-A to the counter affidavit) to submit that the Acting Vice-Chancellor was specifically restrained from taking any policy decision or making any appointment or transfer. In special circumstance, in public interest, if there is extreme urgency for taking such decision, an action might be taken after obtaining permission from the Chancellor, as was indicated in the said letter dated 07.02.2017, he contends. Relying on the said letter dated 07.02.2017, Mr. Sanjay has submitted that constitution of a Governing Body of an affiliated college falls within the ambit of a policy decision, which could not have been done by the Acting Vice-Chancellor leading to the issuance of the notification dated 07.03.2017. He has accordingly submitted that subsequent action of the Acting Vice-Chancellor in modifying the said notification is justified and is in public interest.

Mr. S.D. Sanjay has attempted to distinguish this



Court's decision in case of ***Dr. Arun Kumar Sinha and Others*** (supra) from this case and has submitted that the said observation of this Court in paragraph 107 is in different context altogether where the Acting Vice-Chancellor was, in order to comply with the directives issued by the Supreme Court for appointment of Principals, had constituted a selection committee. In that background, the Court had upheld the constitution of the selection committee by the Vice-Chancellor. He has gone to the extent of submitting that the said decision as a matter of fact does not lay down law for general application on the point as to whether Acting Vice-Chancellor has the same authority and powers as regular Vice-Chancellor has. He has added that the said judgment needs reconsideration, on this limited point.

The submission, which has been advanced by Mr. S.D. Sanjay, learned Senior Counsel appearing on behalf of respondent No.5, while defending the impugned order dated 11.03.2017, has its own inherent fallacy. On the one hand he has questioned the legality and propriety of the notification dated 07.03.2017, whereby a Governing Body of the affiliated college was constituted under the orders of the Acting Vice-Chancellor of the University and, on the other, he is justifying the impugned



decision leading to the issuance of the Office Order dated 11.03.2017 of the same Acting Vice-Chancellor, whereby she has reconstituted the Governing Body by replacing the petitioner with respondent No.5. The submission made on behalf of respondent No.5 that issuance of subsequent office order dated 11.03.2017 was merely an act of correcting the error, which had occurred at the time of issuance of the notification dated 07.03.2017, is not at all acceptable to this Court. The stand on behalf of respondent No.5 that since respondent No.5 is Member of Parliament, which expression comes before Member of State Legislature in the statutory provisions and, therefore, in the larger interest of the college subsequent office order was issued is equally weak and deserves to be rejected. If the Acting Vice-Chancellor had the powers to appoint/nominate members of the Governing Body, he/she could nominate either Member of Parliament or of the State Legislature with the only qualification that he should mainly reside in the district of the area in which the college is situated.

The decision, in case of ***Dr. Arun Kumar Sinha and Others*** (supra), rendered by a coordinate Bench of this Court, in my view, has binding effect on this Court. On close examination of the said decision, I notice that neither any provision has been



overlooked while dealing with Section 13 of the Act on the point of the powers of the Acting Vice-Chancellor nor any binding legal precedent has been shown to me by learned Senior Counsel, which went unnoticed in case of ***Dr. Arun Kumar Sinha and Others*** (supra) in this regard.

At this stage, Mr. Shivendra Kishore, learned Senior Counsel appearing on behalf of the University has submitted that an Acting Vice-Chancellor can discharge all functions of the Vice-Chancellor unless otherwise restrained.

Mr. R. K. Giri, learned counsel appearing on behalf of the Office of the Chancellor has also made his submissions in order to contend that an Acting Vice-Chancellor has to discharge all functions of a Vice-Chancellor unless specifically restrained by the Chancellor.

The question; as to whether the decision of the Acting Vice-Chancellor in constitution of the Governing Body was a policy decision or not shall be dealt with later.

I am convinced with the submission made on behalf of the petitioner that in view of the language used in proviso to Article 3(i) of the Statute for premature termination of the term of a member of the Governing Body, compliance of principles of natural justice for such premature termination is imperative.



Termination under the said provision is a kind of removal from the post before expiry of the term, only on the ground that continuance of member 'is not in the interest of the college', i.e., continuance of such member is against the interest of the college. Removal of a member of the Governing Body of an affiliated college by invoking proviso to Article 3(i) of the Statute, in my opinion, attaches stigma. I must clarify, however, that the requirement of compliance of principles of natural justice for an action of termination under proviso to Article 3(i) of the Statute is different from the statutory requirement of issuance of giving reasonable opportunity to Governing Body to show cause against suspension/dissolution contemplated under Clause 28 of Statute 32, which has been referred to in this Court's decision in case of ***Shankar Dayal Singh*** (supra) relied on by learned counsel for the petitioner. In my view, the requirement of compliance of principles of natural justice in case of action under proviso to Article 3(i) is inherent and is to be presumed in view of the nature of adverse effect it has on a member of the Governing Body, if removed.

Further, the term of office of a member can be terminated under proviso to Article 3(i) of the Statute, on recommendation of the Vice-Chancellor, by the Syndicate.



Whether the decision to remove the petitioner as member of the Governing Body was taken by the Syndicate, is a question, which has not been gone into in the present judgment, in the absence of any pleadings on record.

I have, therefore, no hesitation in coming to a definite conclusion that the impugned Office Order dated 11.03.2017 is unsustainable having been passed in breach of the principles of natural justice. The said order deserves to be quashed accordingly.

Coming now to the question, as to whether the Acting Vice-Chancellor could have constituted a Governing Body despite the restrictions imposed in the letter dated 07.02.2017 issued by the Chancellor's Office, which has been brought on record by way of Annexure-A to the counter affidavit. Since language of Section 13(2) of the Act is clear and states that in case of vacancy of the post of Vice-Chancellor caused due to resignation, death, completion of term or any other reason, the Chancellor may make such arrangements 'for the purpose of performance of the duties of the Office of the Vice-Chancellor', 'as he deems fit'. A view may be taken that once the Chancellor has made arrangement as he deems fit, for the performance of the duties of the Office of the Vice-Chancellor, persons so



authorised to act as a Vice-Chancellor shall discharge all functions as enumerated under Section 10 of the Act. Can it be said that even the Chancellor, after having made arrangement by appointing someone as an Acting Vice-Chancellor, cannot control the powers of the Acting Vice-Chancellor by issuing directions of the nature as contained in the letter dated 17.02.2017 (supra)? In my view, the expression 'as he deems fit' applies both for 'making interim arrangement' by asking someone to act as the Vice-Chancellor in the absence of a regular Vice-Chancellor as also for 'performance of the duties of the Office of the Vice-Chancellor'. Meaning thereby, the Chancellor in case of the vacancy of the post of Vice-Chancellor caused, due to the reasons enumerated in sub-Section (2) of Section 13 of the Act, may make arrangement by asking someone to act as a Vice-Chancellor 'as he deems fit' for the performance of the duties of the Office of the Vice-Chancellor, again, 'as he deems fit'.

I am, therefore, of the view that the Chancellor may restrict the powers of the Acting Vice-Chancellor asked to perform the duties of Vice-Chancellor under Section 13(2) of the Act. Whether constitution of the Governing Body is a policy decision or not, in my view, should be decided by the



Chancellor himself, since the pleadings on record are inadequate for this Court to reach a definite conclusion on this aspect.

In view of the aforesaid, while quashing the impugned Office order dated 11.03.2017 (Annexure-1 to the writ application), I allow this writ application with a direction to the Office of the Chancellor to decide whether constitution of the Governing Body with the issuance of notification dated 07.03.2017 was within the powers of the Acting Vice-Chancellor or not in the light of the letter issued by the Office of the Chancellor dated 17.02.2017.

The Court expects that a decision in this regard is taken expeditiously, preferably within two months from the date of receipt/production of a copy of this order.

There shall be no order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	19.12.2018
Transmission Date	N/A

